

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

664H0691

CONFERENCE COMMITTEE ENGROSSED NO. **SB** **177** - 02/22/2002

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Hutmacher and Koskan and Representatives Juhnke and Jensen

1 FOR AN ACT ENTITLED, An Act to revise and modify certain provisions relating to the award
2 of child custody and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Except for proceedings under chapter 26-7A, 26-8A, 26-8B, or 26-8C, the court may allow
7 any person other than the parent of a child to intervene or petition a court of competent
8 jurisdiction for custody or visitation of any child with whom he or she has served as a primary
9 caretaker, has closely bonded as a parental figure, or has otherwise formed a significant and
10 substantial relationship. It is presumed to be in the best interest of a child to be in the care,
11 custody, and control of the child's parent, and the parent shall be afforded the constitutional
12 protections as determined by the United States Supreme Court and the South Dakota Supreme
13 Court. A parent's presumptive right to custody of his or her child may be rebutted by proof:

14 (1) That the parent has abandoned or persistently neglected the child;



- 1 (2) That the parent has forfeited or surrendered his or her parental rights over the child
2 to any person other than the parent;
- 3 (3) That the parent has abdicated his or her parental rights and responsibilities; or
- 4 (4) That other extraordinary circumstances exist which, if custody is awarded to the
5 parent, would result in serious detriment to the child.

6 Section 2. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 Serious detriment to a child may exist whenever there is proof of one or more of the
9 following extraordinary circumstances:

- 10 (1) The likelihood of serious physical or emotional harm to the child if placed in the
11 parent's custody;
- 12 (2) The extended, unjustifiable absence of parental custody;
- 13 (3) The provision of the child's physical, emotional, and other needs by persons other than
14 the parent over a significant period of time;
- 15 (4) The existence of a bonded relationship between the child and the person other than
16 the parent sufficient to cause significant emotional harm to the child in the event of
17 a change in custody;
- 18 (5) The substantial enhancement of the child's well-being while under the care of a person
19 other than the parent;
- 20 (6) The extent of the parent's delay in seeking to reacquire custody of the child;
- 21 (7) The demonstrated quality of the parent's commitment to raising the child;
- 22 (8) The likely degree of stability and security in the child's future with the parent;
- 23 (9) The extent to which the child's right to an education would be impaired while in the
24 custody of the parent; or

1 (10) Any other extraordinary circumstance that would substantially and adversely impact
2 the welfare of the child.

3 Section 3. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 Nothing in section 1 of this Act creates any right on behalf of a stepparent to seek custody
6 or visitation with a stepchild who has lived with that stepparent merely because the stepparent
7 was married to or living with the child's parent.

8 Section 4. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 If a court determines that a person other than a parent should be awarded custody or
11 visitation, the court need not terminate either parent's parental rights over the child. A judgment
12 awarding to a person other than a parent custodial rights may award the parent visitation rights
13 with the child.

14 Section 5. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 If a court awards a person other than a parent custodial rights to a child, the court may set
17 child support in whatever amount it deems appropriate, and notwithstanding the provisions of
18 any other statute to the contrary, may waive the parent's duty to provide monetary or other
19 support for his or her child.

20 Section 6. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 It is the express legislative intent that this Act apply to all pending matters involving disputed
23 custody of a child between a parent and a person other than a parent meeting the standing
24 provisions of section 1 of this Act, and all subsequent custody disputes involving a person other

1 than a parent.

2 Section 7. Whereas, this Act is necessary for the immediate preservation of the public peace,
3 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
4 effect from and after its passage and approval.